

## **IC 22-4-17**

### **Chapter 17. Claims for Benefits**

#### **IC 22-4-17-1**

##### **Rules; mass layoffs; extended benefits; posting**

Sec. 1. (a) Claims for benefits shall be made in accordance with such regulations as the board may prescribe; however, the board shall prescribe reasonable procedures consistent with the provisions of this article for the expediting of the taking of claims of individuals for benefits in instances of mass layoffs by employers, the purpose of which shall be to minimize the amount of time required for such individuals to file claims upon becoming unemployed as the result of such mass layoffs.

(b) Except when the result would be inconsistent with the other provisions of this article, as provided in the rules of the board, the provisions of this article which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the commissioner shall make an appropriate public announcement.

(d) Computations required by the provisions of IC 22-4-2-34(e) shall be made by the commissioner in accordance with regulations prescribed by the United States Secretary of Labor.

(e) Each employer shall display and maintain in places readily accessible to all employees posters concerning its regulations and shall make available to each such individual at the time the individual becomes unemployed printed benefit rights information furnished by the department.

*(Formerly: Acts 1947, c.208, s.1801; Acts 1957, c.147, s.1; Acts 1971, P.L.355, SEC.41.) As amended by Acts 1982, P.L.95, SEC.6; P.L.18-1987, SEC.46; P.L.21-1995, SEC.85.*

#### **IC 22-4-17-2**

##### **Filing; determination of status; hearings; disputed claims**

Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of the individual's status as an insured worker in a form prescribed by the board. A written notice of the determination of insured status shall be furnished to the individual promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit

period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within ten (10) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) Except as provided in subsection (i), the department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. Such notice shall contain the date, the name and social security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within ten (10) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within ten (10) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the board.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in IC 22-4-17-3.

(e) In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for waiting period credit or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof. Except as otherwise hereinafter provided in this subsection regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within ten (10) days after such notification was mailed to the claimant's or the employer's last known address, or

otherwise delivered to the claimant or the employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. With respect to notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless such claimant or employer, within fifteen (15) days after such notification was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. If such hearing is desired, the request therefor shall be filed with the commissioner in writing within the prescribed periods as above set forth in this subsection and shall be in such form as the board may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

(f) A person may not participate on behalf of the department in any case in which the person is an interested party.

(g) Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

(h) Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

(i) If an allegation of the applicability of IC 22-4-15-1(c)(8) is made by the individual at the time of the claim for benefits, the department shall not notify the employer that a claim for benefits has been made.

*(Formerly: Acts 1947, c.208, s.1802; Acts 1953, c.177, s.22; Acts 1955, c.317, s.10; Acts 1965, c.190, s.11; Acts 1969, c.300, s.5; Acts 1971, P.L.355, SEC.42; Acts 1972, P.L.174, SEC.2.) As amended by Acts 1977, P.L.262, SEC.27; P.L.18-1987, SEC.47; P.L.135-1990, SEC.6; P.L.1-1991, SEC.152; P.L.21-1995, SEC.86; P.L.290-2001, SEC.10; P.L.189-2003, SEC.5; P.L.273-2003, SEC.5; P.L.97-2004, SEC.84.*

### **IC 22-4-17-2.5**

#### **Filing; income taxes**

Sec. 2.5. (a) When an individual files an initial claim, the individual shall be advised of the following:

- (1) Unemployment compensation is subject to federal, state, and local income taxes.
- (2) Requirements exist concerning estimated tax payments.
- (3) After December 31, 1996, the individual may elect to have income taxes withheld from the individual's payment of unemployment compensation. If an election is made, the department shall make the following withholdings for federal, state, and local income taxes:
  - (A) Federal income tax will be withheld by the department at the applicable rate provided in the Internal Revenue Code.
- (4) An individual is allowed to change an election made under this section.

(b) Money withheld from unemployment compensation under this section shall remain in the unemployment fund until transferred to the federal taxing authority for payment of income taxes.

(c) The commissioner shall follow all procedures of the United States Department of Labor and the Internal Revenue Service concerning the withholding of income taxes.

(d) Money shall be deducted and withheld in accordance with the priorities established in regulations developed by the commissioner.

*As added by P.L.166-1996, SEC.4.*

### **IC 22-4-17-3**

#### **Administrative appeal; disputed claims**

Sec. 3. Unless such request for hearing is withdrawn, an administrative law judge, after affording the parties a reasonable opportunity for fair hearing, shall affirm, modify, or reverse the findings of fact and decision of the deputy. The parties shall be duly notified of such decision and the reasons therefor, which shall be deemed to be the final decision of the review board, unless within fifteen (15) days after the date of notification or mailing of such decision, an appeal is taken by the commissioner or by any party adversely affected by such decision to the review board.

*(Formerly: Acts 1947, c.208, s.1803; Acts 1957, c.299, s.4.) As amended by P.L.18-1987, SEC.48; P.L.135-1990, SEC.7; P.L.21-1995, SEC.87.*

### **IC 22-4-17-4**

#### **Administrative law judges; disputed claims; hearings**

Sec. 4. (a) The commissioner shall appoint one (1) or more administrative law judges to hear and decide disputed claims. Such administrative law judges shall be full-time salaried employees of the department. Administrative law judges appointed under this section are not subject to IC 4-21.5 or any other statute regulating administrative law judges, unless specifically provided.

(b) The unemployment insurance board may authorize

employment of part time administrative law judges for limited periods.

*(Formerly: Acts 1947, c.208, s.1804.) As amended by P.L.18-1987, SEC.49; P.L.135-1990, SEC.8; P.L.21-1995, SEC.88; P.L.290-2001, SEC.11.*

#### **IC 22-4-17-5**

##### **Review board; appointments; hearings**

Sec. 5. (a) The governor shall appoint a review board composed of three (3) members, not more than two (2) of whom shall be members of the same political party, with salaries to be fixed by the governor. The review board shall consist of the chairman and the two (2) members who shall serve for terms of three (3) years. At least one (1) member must be admitted to the practice of law in Indiana.

(b) Any claim pending before an administrative law judge, and all proceedings therein, may be transferred to and determined by the review board upon its own motion, at any time before the administrative law judge announces his decision. Any claim pending before either an administrative law judge or the review board may be transferred to the board for determination at the direction of the board. If the review board considers it advisable to procure additional evidence, it may direct the taking of additional evidence within a time period it shall fix.

(c) Any proceeding so removed to the review board shall be heard by a quorum of the review board in accordance with the requirements of section 3 of this chapter. The review board shall notify the parties to any claim of its decision, together with its reasons for the decision.

(d) Members of the review board, when acting as administrative law judges, are subject to section 15 of this chapter.

(e) The review board may on the board's own motion affirm, modify, set aside, remand, or reverse the findings, conclusions, or orders of an administrative law judge on the basis of any of the following:

(1) Evidence previously submitted to the administrative law judge.

(2) The record of the proceeding after the taking of additional evidence as directed by the review board.

(3) A procedural error by the administrative law judge.

*(Formerly: Acts 1947, c.208, s.1805; Acts 1965, c.190, s.12.) As amended by P.L.34-1985, SEC.7; P.L.135-1990, SEC.9; P.L.173-1991, SEC.1.*

#### **IC 22-4-17-6**

##### **Disputed claims; conduct of hearings and appeals**

Sec. 6. The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with rules adopted by the board for determining the rights of the parties, whether or not the rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with

a disputed claim. The testimony at any hearing upon a disputed claim need not be transcribed unless the disputed claim is further appealed. Each party to a hearing before an administrative law judge held under section 3 of this chapter shall be mailed a notice of the hearing at least ten (10) days before the date of the hearing specifying the place and time of the hearing and identifying the issues to be decided. If a hearing so scheduled has not commenced within at least sixty (60) minutes of the time for which it was scheduled, then a party involved in the hearing may request a continuance of the hearing. A request for a continuance shall be submitted to the administrative law judge scheduled to conduct the hearing if the administrative law judge is available to receive the request, or otherwise may be submitted to the local office in which or nearest to which the hearing is scheduled to be held. Upon submission of a request for continuance of a hearing under circumstances provided in this section, the continuance shall be granted unless the party requesting the continuance was responsible for the delay in the commencement of the hearing as originally scheduled. In the latter instance, the continuance shall be discretionary with the administrative law judge. Testimony or other evidence introduced by a party at a hearing before an administrative law judge or the review board that another party to the hearing:

(1) is not prepared to meet; and

(2) by ordinary prudence could not be expected to have anticipated;

shall be good cause for continuance of the hearing and upon motion such continuance shall be granted.

*(Formerly: Acts 1947, c.208, s.1806; Acts 1963, c.208, s.1.) As amended by P.L.144-1986, SEC.105; P.L.219-1989, SEC.1; P.L.135-1990, SEC.10.*

#### **IC 22-4-17-7**

##### **Disputed claims; hearings; subpoenas; production of books and papers**

Sec. 7. In the discharge of the duties imposed by this article, any member of the board, the review board, or an administrative law judge, or any duly authorized representative of any of them, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue and serve subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the disputed claim or the administration of this article.

*(Formerly: Acts 1947, c.208, s.1807.) As amended by P.L.144-1986, SEC.106; P.L.135-1990, SEC.11.*

#### **IC 22-4-17-8**

##### **Disputed claims; subpoenas; contempt**

Sec. 8. In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction

of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the board or the review board or a duly authorized representative of either, shall have jurisdiction to issue to such person an order requiring such person to appear before the board, the review board, an administrative law judge, or the duly authorized representative of any of these, there to produce evidence if so ordered, or there to give testimony touching the matter in question or under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

*(Formerly: Acts 1947, c.208, s.1808.) As amended by P.L.135-1990, SEC.12.*

#### **IC 22-4-17-8.5**

##### **Disputed claims; hearing by telephone**

Sec. 8.5. An administrative law judge and the review board may hold a hearing under this chapter by telephone if any of the following conditions exist:

- (1) The claimant or the employer is not located in Indiana.
- (2) All of the following conditions exist:
  - (A) The claimant and the employer are located in Indiana.
  - (B) The claimant or the employer requests without objection that the hearing be held by telephone.
  - (C) The administrative law judge or the review board determines that the distance between the location of the claimant and the location of the employer is so great that a hearing held by telephone is justified under the circumstances.
- (3) A party cannot appear in person because of an illness or injury to the party.
- (4) In the case of a hearing before the review board, the issue to be adjudicated does not require both parties to be present.
- (5) The unemployment insurance review board has determined that a hearing by telephone is proper and just.

*As added by P.L.173-1991, SEC.2.*

#### **IC 22-4-17-9**

##### **Disputed claims; self-incrimination; privileges and immunities**

Sec. 9. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the board, the review board, an administrative law judge or the duly authorized representative of any of them in obedience to the subpoena of any of them in any cause or proceeding before any of them on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled after having claimed his privilege against

self-incrimination to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. Any testimony or evidence submitted in due course before the board, review board, an administrative law judge, or any duly authorized representative of any of them shall be deemed a communication presumptively privileged with respect to any civil action except actions to enforce the provisions of this article.  
*(Formerly: Acts 1947, c.208, s.1809.) As amended by P.L.144-1986, SEC.107; P.L.135-1990, SEC.13.*

#### **IC 22-4-17-10**

##### **Disputed claims; witness fees**

Sec. 10. Witnesses subpoenaed pursuant to the provisions of this article shall be allowed fees at a rate fixed by the board, and such fees shall be deemed a part of the expense of administering this article.

*(Formerly: Acts 1947, c.208, s.1810.) As amended by P.L.144-1986, SEC.108.*

#### **IC 22-4-17-11**

##### **Disputed claims; appeal; notice; stay of proceedings**

Sec. 11. (a) Any decision of the review board, in the absence of appeal as provided in this section, shall become final fifteen (15) days after the date the decision is mailed to the interested parties. The review board shall mail with the decision a notice informing the interested parties of their right to appeal the decision to the court of appeals of Indiana. The notice shall inform the parties that they have fifteen (15) days from the date of mailing within which to file a notice of intention to appeal, and that in order to perfect the appeal they must request the preparation of a transcript in accordance with section 12 of this chapter.

(b) If the commissioner or any party adversely affected by the decision files with the review board a notice of an intention to appeal the decision, that action shall stay all further proceedings under or by virtue of the review board decision for a period of thirty (30) days from the date of the filing of the notice, and, if the appeal is perfected, further proceedings shall be further stayed pending the final determination of the appeal. However, if an appeal from the decision of the review board is not perfected within the time provided for by this chapter, no action or proceeding shall be further stayed.

*(Formerly: Acts 1947, c.208, s.1811; Acts 1957, c.299, s.5.) As amended by P.L.34-1985, SEC.8; P.L.21-1995, SEC.89.*

#### **IC 22-4-17-12**

##### **Disputed claims; appeal; errors of law; parties; transcript; expenses; assignment; disposition; findings of fact or conclusions**

Sec. 12. (a) Any decision of the review board shall be conclusive and binding as to all questions of fact. Either party to the dispute or



the commissioner may, within thirty (30) days after notice of intention to appeal as provided in this section, appeal the decision to the court of appeals of Indiana for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

(b) In every appeal the review board shall be made a party appellee, and the review board shall, at the written request of the appellant and after payment of the uniform average fee required in subsection (c) is made, prepare a transcript of all the proceedings had before the administrative law judge and review board, which shall contain a transcript of all the testimony, together with all objections and rulings thereon, documents and papers introduced into evidence or offered as evidence, and all rulings as to their admission into evidence. The transcript shall be certified by the chairman of the review board and shall constitute the record upon appeal.

(c) All expenses incurred in the preparation of the transcript shall be charged to the appellant. The fee for a transcript shall be the actual cost of preparation that may include the cost of materials, reproduction, postage, handling, and hours of service rendered by the preparer. The commissioner shall establish a uniform average fee to be paid by the appellant before the transcript is prepared. After the transcript is completed, the actual cost shall be determined and the appellant shall either pay the amount remaining above the uniform average fee or be refunded the amount the uniform average fee exceeds the actual cost of preparation. The commissioner shall establish the procedure by which transcript fees are determined and paid.

(d) Notwithstanding subsections (b) and (c), the appellant may request that a transcript of all proceedings had before the administrative law judge and review board be prepared at no cost to the appellant by filing with the review board, under oath and in writing, a statement:

- (1) declaring that the appellant is unable to pay for the preparation of the transcript because of the appellant's poverty;
- (2) setting forth the facts that render the appellant unable to pay for the preparation of the transcript; and

- (3) declaring that the appellant is entitled to redress on appeal.

Upon finding that the appellant is unable to pay for the preparation of the transcript because of the appellant's poverty, the review board shall prepare a transcript at no cost to the appellant.

(e) The review board may, upon its own motion, or at the request of either party upon a showing of sufficient reason, extend the limit within which the appeal shall be taken, not to exceed fifteen (15) days. In every case in which an extension is granted, the extension shall appear in the record of the proceeding filed in the court of appeals.

(f) The appellant shall attach to the transcript an assignment of errors. An assignment of errors that the decision of the review board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of facts. In any appeal under this

section, no bond shall be required for entering the appeal.

(g) All appeals shall be considered as submitted upon the date filed in the court of appeals, shall be advanced upon the docket of the court, and shall be determined without delay in the order of priority. Upon the final determination of the appeal, the review board shall enter an order in accordance with the determination, and the decision shall be final. The court of appeals may in any appeal remand the proceeding to the review board for the taking of additional evidence, setting time limits therefor, and ordering the additional evidence to be certified by the review board to the court of appeals to be used in the determination of the cause.

(h) Any finding of fact, judgment, conclusion, or final order made by a person with the authority to make findings of fact or law in an action or proceeding under this article is not conclusive or binding and shall not be used as evidence in a separate or subsequent action or proceeding between an individual and the individual's present or prior employer in an action or proceeding brought before an arbitrator, a court, or a judge of this state or the United States regardless of whether the prior action was between the same or related parties or involved the same facts.

*(Formerly: Acts 1947, c.208, s.1812; Acts 1957, c.299, s.6.) As amended by P.L.34-1985, SEC.9; P.L.20-1986, SEC.11; P.L.18-1987, SEC.50; P.L.135-1990, SEC.14; P.L.21-1995, SEC.90.*

#### **IC 22-4-17-13**

##### **Disputed claims; certifying questions of law; priorities**

Sec. 13. The review board, on its own motion, may certify questions of law to the supreme court or the court of appeals for a decision and determination. All such certified questions of law shall be considered submitted upon the date filed in the supreme court or the court of appeals and shall be advanced upon the docket of the court to be determined without delay in the order of priority.

*(Formerly: Acts 1947, c.208, s.1813.) As amended by P.L.3-1989, SEC.134.*

#### **IC 22-4-17-14**

##### **Notices**

Sec. 14. (a) This section applies to notices given under sections 2, 3, 11, and 12 of this chapter. This section does not apply to rules adopted by the board, unless specifically provided.

(b) As used in this section, "notices" includes mailings of notices, determinations, decisions, orders, motions, or the filing of any document with the appellate division or review board.

(c) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice.

(d) The filing of a document with the appellate division or review board is complete on the earliest of the following dates that apply to the filing:

(1) The date on which the document is delivered to the appellate

division or review board.

(2) The date of the postmark on the envelope containing the document if the document is mailed to the appellate division or review board by the United States Postal Service.

(3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the appellate division or review board by a private carrier.

*As added by P.L.135-1990, SEC.15. Amended by P.L.173-1991, SEC.3.*

#### **IC 22-4-17-15**

##### **Impartial administrative law judge**

Sec. 15. (a) An administrative law judge may not preside over or otherwise participate in the hearing or disposition of an appeal in which the judge's impartiality might reasonably be questioned, including instances where the judge:

(1) has:

(A) personal bias or prejudice concerning a party; or

(B) personal knowledge of disputed evidentiary facts concerning the appeal;

(2) has served as a lawyer in the matter in controversy; or

(3) knows that the judge has any direct or indirect financial or other interest in the subject matter of an appeal or in a party to the appeal.

(b) Disqualification of an administrative law judge shall be in accordance with the rules adopted by the Indiana unemployment insurance board.

(c) This subsection does not apply to the disposition of ex parte matters specifically authorized by statute or rule. An administrative law judge may not communicate, directly or indirectly, regarding any substantive issue in the appeal while the appeal is pending, with any party to the appeal, or with any individual who has a direct or indirect interest in the outcome of the appeal, without notice and opportunity for all parties to participate in the communication.

*As added by P.L.135-1990, SEC.16.*